



# COUNTY OF HUMBOLDT

For the meeting of: 10/26/2021

---

File #: 21-1507

---

**To:** The Humboldt County Board of Supervisors

**From:** Planning and Building Department

**Agenda Section:** Public Hearing

**SUBJECT:**

Rocci Costa Conditional Use Permit Modification to Allow 10,000 Square Feet of Full-Sun Outdoor Dry-Farmed Cannabis Cultivation in the Blue Lake Community Plan Area

**RECOMMENDATION:**

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony by the applicant/ appellant and public;
2. Close the public hearing;
3. Adopt the resolution (Resolution 21-\_\_). (Attachment 1a) which does the following:
  - a. Finds that the Board has considered the addendum to the Mitigated Negative Declaration adopted for the CMMLUO prepared for the Rocci Costa project;
  - b. Finds that the proposed modification consistent with the Humboldt County Zoning Ordinance and General Plan; and
  - c. Approves the Conditional Use Permit Modification.

**SOURCE OF FUNDING:**

Applicant funds.

**DISCUSSION:**

**Executive Summary**

This is a modification to a Conditional Use Permit approved to allow relocation of 10,000 square feet of new cannabis cultivation out of the Blue Lake Community Plan area as part of the Retirement, Remediation and Relocation (RRR) program. This request would modify the permit to allow cultivation on the project site at the end of Warren Creek Road within the Blue Lake Community Planning Area. The approval to relocate the cannabis to another site was a compromise solution between the applicant and neighborhood. Unfortunately, the applicant has not been able to locate and secure a location whereupon to transfer the cultivation. The applicant requests consideration of their original permit which was on appeal to the Board of Supervisors.

### Project Description

The project would consist of 10,000 square feet of new open-air outdoor cannabis cultivation, and a 1,000 square foot ancillary nursery on a 5-acre parcel. Existing improvements on the parcel include a garage, a house slab, and a well. The well would only be used for domestic purposes as the applicant is proposing to dry farm in the native soil and utilize rainwater catchment off the garage for the initial watering of plantings. The estimated annual water usage is about 25,000 gallons. The applicant will store water in five 5,000-gallon tanks. Cannabis will be dried on site in portable carports and processed off site at a licensed processing facility. The cannabis activity will be operated by three family members with no additional employees. Power would be provided by P.G.&E. The site contains an existing 50-foot-wide access easement along the northern property line used by the adjacent neighbor to access APN 516-211-023. The existing driveway to APN 516-211-023 is not contained within the access easement. The applicant proposes to relocate the driveway to within the 50-foot-wide access easement.

The project site is accessed from Warren Creek Road, of which 0.95 mile is county-maintained. The Department of Public Works (PW) has indicated that Warren Creek does not meet Category 4 standards due to being narrow over most of the road and multiple pinch points that have limited sight distance. The applicant submitted a Road Evaluation completed by Green Road Consulting dated Dec. 9, 2019. The Department of Public Works reviewed the Road Evaluation and recommended that for the road to meet functional capacity, the applicant would be required to install seven turns-outs on Warren Creek Road prior to commencement of operations. In addition, the applicant would need to restrict the use of any vehicle larger than a regular pickup to off peak hours, being 9 am to 4 pm. If approved, the applicant would be required to adhere to these recommendations. On Jan. 11, 2020, the applicant submitted a revised Road Evaluation to address Public Work's comments and added two additional turnouts for a total of nine turnouts and additional "warning signage" to be installed on Warren Creek Road.

### Background

The application was initially filed under the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) as a Zoning Clearance Certificate, but given its location in the Blue Lake Community Plan Area the CCLUO requires one of three things:

1. Locate the cultivation activities more than 600 feet from any residential boundary, or
2. Enclose the cultivation, or
3. Obtain approval of a Conditional Use Permit

The applicant chose to pursue a Conditional Use Permit for a full sun, dry-farming, method of cultivation. The cultivation application would have qualified as a Zoning Clearance Certificate except for the fact that an individual residence is located less than 600 feet from the site. This residence is located approximately 570 feet from the proposed cultivation.

The review of this Conditional Use Permit has had a lengthy history. The following is a brief history leading up to the current circumstances.

1. First Planning Commission Hearing

On Sept. 5, 2019, this application was brought forward to the Planning Commission with a recommendation of denial by the Planning and Building Department due a lack of information on the access road. The applicant was notified that the access road did not meet Category 4 standards and would need additional analysis. The applicant refused to pursue additional engineering analysis unless they knew that the Conditional Use Permit would be approved. Without an understanding of the road capacity, the findings for CUP approval could not be made. At this hearing the Planning Commission expressed a desire to approve the permit should an engineered road evaluation be completed which identified improvements to address the capacity of the access road. At this hearing there was only one neighbor who had expressed opposition to the project. The applicant committed to completing the road evaluation and the item was continued.

2. Second Planning Commission Hearing

The applicant submitted a Road Evaluation indicating the road could safely support the cultivation subject to installation of additional turnouts. The item was rescheduled to the Planning Commission meeting of March 5, 2020 with a recommendation for approval. Prior to the Planning Commission meeting, letters in support and letters of opposition to the project were submitted from the community (PC Staff Report 3.5.2020 - Attachment 4). Additional comments were submitted after staff report publishing, but prior to the meeting (Attachment 5). The community expressed concern about odor pollution, increased traffic, public safety, and the loss of sense of place and community. One of the main concerns is that the odor from the proposed unenclosed cannabis cultivation would affect the well-established traditions organized by long-time community members. Community members have testified that the community on Warren Creek Road traditionally gathers to celebrate holidays like the Fourth of July, and parade down Warren Creek Road. The community raised the concern that odor from the cannabis operation will degrade their quality of life and their ability to enjoy these long-standing community traditions.

The Planning Commission received a significant amount of public testimony against the project during the hearing. Public testimony included concerns regarding odor pollution, increased traffic on a narrow road (Warren Creek Road), reoccurring violence associated with the parcel, current maintenance of the parcel (junk cars and spent soil), public safety, and the loss of sense of place and community.

The Planning Commission denied this project with a 3-2 vote (Ayes: Mitchell, Levy, and Bongio. Nays: Newman and McCavour. Absent: O'Neill).

3. First Board of Supervisors Meeting

The applicant filed an appeal of the Planning Commission's denial, which was heard by the Board of Supervisors on Aug. 25, 2020. At this meeting, the Board approved a motion to require

that the appellant (applicant) and the members of the community of Warren Creek Road meet and discuss whether a resolution of the various neighborhood compatibility issues could be reached.

a. First Community Meeting

The county and both parties met on Sept. 9, 2020, on Warren Creek Road to discuss the project and the neighborhood concerns. The outcome of that meeting was that all parties agreed that the Rocci Costa application would seek approval for Retirement, Remediation, and Relocation (RRR) purposes only such that this cultivation area would not be permitted in the Warren Creek area. The applicant/appellant submitted the required paperwork to Retire and Relocate off the property and the project would be referred back to the Board of Supervisors with a recommendation that the Board approve the appeal and approve the Conditional Use Permit for RRR purposes only.

4. Second Board of Supervisors Meeting

On March 16, 2021, the Board held a hearing where it approved the appeal and approved the Conditional Use Permit for Retirement and Relocation purposes by a unanimous vote. As part of this approval, a covenant to restrict commercial cannabis from being cultivated on the subject property was recorded on the title to the property. The commitment was made that the county would work with the applicant to find a suitable location to move the cultivation site to.

The applicant and county staff have explored locations to relocate this cultivation to. The number of locations capable of supporting an RRR and available to the applicant are limited. The applicant is not in a position to purchase a large land holding, and smaller parcels capable of supporting RRR's have either all been acquired or are in Community Plan Areas.

Most RRR's are sold to a property owner who acquires them to expand their cultivation area. The applicant is different in that they are not seeking to sell their RRR but want to cultivate. The applicant filed an application to modify the approved Conditional Use Permit on Aug. 31, 2021, to remove the covenant prohibiting commercial cannabis cultivation from the property and to seek approval of an entitlement to cultivate 10,000 square feet of open-air cannabis; in effect, to seek approval of the original application.

The applicant's primary objective is to cultivate on this property, but if they cannot cultivate on this property, they request that the covenant restricting commercial cultivation be removed from the property. This would be appropriate with denial of the application. Removal of the covenant does not mean commercial cultivation is allowed, it only means that an application can be submitted. The CCLUO would require approval of a Conditional Use Permit to authorized cultivation at this location in a Community Plan Area.

On Sept. 30, 2021, the Planning Department held a community meeting over zoom with the Warren Creek Community to inform them of this application and to receive comments. The community was organized and consistent in their opposition to this project being approved at the subject site.

Analysis

This application complies with all the requirements of the CMMLUO (agriculturally zoned property, prime ag soils) and is the type of cultivation that the county is generally very supportive of (dry farmed in native soil, minimal water use). The land is completely flat and requires no grading. There are no sensitive habitats or special status species that could potentially be impacted, and the minimal power needs will be provided by PG&E. No employees are proposed, and the traffic associated with the operation will be similar to traffic expected from a single-family residence.

Under the CMMLUO this application is allowed with a Zoning Clearance Certificate. The CCLUO requires non-discretionary applications in Community Plan Areas meet certain criteria. If the applicant could maintain 600 feet from any adjacent residences or residentially zoned parcels, the application could have been approved as a Zoning Clearance certificate. As noted above there is a single residence within 600 feet of the cultivation site (570 feet away). The applicant could enclose the cultivation in greenhouses and receive approval of a ZCC. The applicant wants to cultivate full sun outdoor and thus chose not to pursue this path. The option available was to apply for and receive approval of a Conditional Use Permit.

The rationale for requiring a discretionary permit for a cultivation site in a Community Plan Area is to provide an opportunity for the community to express their concerns with the cultivation. In this case, the cultivation is fairly isolated with only a few residents in proximity to the site. The primary concern seems to be with how this property has been managed in the past. The public comments include a litany of complaints about how this property has been managed in the past and how the owners and occupants have treated the community. The applicant maintains the complaints against the applicant are misplaced. The property is technically owned by the applicant's brother.

This is an application for a small family cannabis cultivation on prime ag soils using perma-culture and full sun outdoor, but the community has expressed the past activities of the applicant portray a poor potential for the applicant to operate the cultivation site in an acceptable manner.

This applicant cannot use the RRR allowance under the existing permit, is seeking to cultivate on this site, but if they cannot cultivate on this site, they request that the permit be denied and allow the covenant to be removed from the property. There is no rationale for the covenant if the permit is denied. The applicant requests an up or down vote on the application to cultivate on the site and Planning staff has provided draft resolutions for both approval and denial of this application.

FINANCIAL IMPACT:

There will be no additional impact on the General Fund.

STRATEGIC FRAMEWORK:

Approval of this action supports your Board's Strategic Framework by its support of the Goals and Policies of stabilizing and supporting a successful cannabis industry. Denial of this application supports the Board's Strategic Framework by its core role of enforcing laws and regulations to protect residents.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Planning staff has provided a draft resolution for denial of this project as the Board may choose to deny the application. If the application were to be denied the entitlement to relocate would be rescinded. Accordingly, the covenant prohibiting commercial cannabis cultivation on the property which was associated with that entitlement would be rescinded. This is reflected in Alternative Resolution 1b.

The board could choose to simply deny the modification request which would result in no change, but the applicant would still have the covenant on the property and they indicate they are paying rent for this obligation.

ATTACHMENTS:

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

- 1a. Draft Board Resolution and Findings Approval
- 1b. Draft Board Resolution and Findings Denial
2. Resolution of the Planning Commission, Resolution No. 20-18
3. Planning Commission Staff Report 9.5.2019
4. Planning Commission Staff Report 3.5.2020
5. Public Comment Submitted Directly to PC
6. Board of Supervisors Resolution 21-31
7. Modification Operations Plan
8. Modification Site Plan
9. CEQA Addendum
10. Applicant's Evidence in Support of Required Findings
11. Road Evaluation 1.10.2020
12. Modification Public Comment
13. Modification Correspondence from Applicant

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A